

DEPARTMENT OF STATE REVENUE**LETTER OF FINDINGS NUMBER: 96-0466
Corporate Income Tax
For Years Ending March 31, 1992, 1993, and 1994**

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES**I. Corporate Income Tax – Imposition of Gross Income Tax on Sales of Products in Indiana**

Authority: Ind. Code § 6-2.1-2-2;
Ind. Admin. Code tit. 45, r. 1-1-120;
Mueller Brass Company v. Gross Income Tax Division, Indiana State Department of Revenue, 265 N.E.2d 704 (Ind. 1971);
Indiana-Kentucky Electric Corp. v. Indiana Department of State Revenue, 598 N.E.2d 647 (Ind. Tax Ct. 1992).

The taxpayer protests the imposition of gross income tax on sales of its products to dealers in Indiana.

II. Tax Administration – Interest

Authority: Ind. Code § 6-8.1-10-1.

The taxpayer protests the imposition of interest on the assessed tax liability.

STATEMENT OF FACTS

The taxpayer is a corporation incorporated in the state of Delaware and is the subsidiary of an international corporation located in Japan. The taxpayer's primary business is the sale, lease, and service of copier machines and fax machines. In Indiana, the taxpayer sells its products directly to its customers and also to authorized dealers. The dealers solicit their own customers. The taxpayer employs salespersons who reside out-of-state. Customers either mail or telephone orders to an out-of-state office where the orders are

processed. The taxpayer does not have an office in Indiana and its products are shipped into Indiana from out-of-state warehouses.

The taxpayer employs approximately four technicians in Indiana to perform service on, and occasionally install, the taxpayer's products. The technicians reside in Indiana and operate out of their homes. The taxpayer agrees that revenue from services provided by its technicians is taxable income in Indiana. When a technician is not available, the taxpayer will sometimes subcontract with a dealer to service and install the taxpayer's products. The taxpayer was assessed gross income tax on the income from sales of its products to the dealers in Indiana. The taxpayer was also charged interest on the amount of income tax assessed. The income tax audit was completed on April 10, 1996. The taxpayer filed a timely protest and a telephone conference was held on July 14, 2000.

I. Corporate Income Tax – Imposition of Gross Income Tax on Sales of Products in Indiana

DISCUSSION

The taxpayer argues that the sale of its products to Indiana dealers constitutes the sale of goods in interstate commerce and is not subject to Indiana gross income tax. The taxpayer cites Mueller Brass Company v. Gross Income Tax Division, Indiana State Department of Revenue, 265 N.E.2d 704 (Ind. 1971) in support of its position. The Court in Mueller Brass held that sales to customers in northern Indiana that,

were initiated by personnel residing outside the state, that the goods sold were shipped into Indiana from another state, that the orders that were not given directly to the salesmen were mailed to appellant's out-of-state office, and that the orders were accepted and payment received at offices located outside of Indiana,

were not subject to Indiana gross income tax. Id. at 717.

The Mueller Brass court found, however, that sales into the southern two thirds of the state were subject to taxation due to the fact the company employed a resident sales staff in Indianapolis which "performed local business activities and provided local services." Id. The Court reasoned that the presence of the sales staff and their activities established a nexus with Indiana and thus the proceeds from those sales were subject to gross income tax.

The gross income tax statute, as it applies to nonresidents, reads in relevant part: "(a) An income tax, known as the gross income tax, is imposed upon the receipt of: . . . (2) the taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident or a domiciliary of Indiana." Ind. Code § 6-2.1-2-2. A taxpayer's income has an Indiana source when a taxpayer has an Indiana business situs at which activities related to the transaction giving rise to the income are more than minimal, not remote or incidental to the transaction. Indiana-Kentucky

Electric Corp. v. Indiana Department of State Revenue, 598 N.E.2d 647, 662 (Ind. Tax Ct. 1992).

The Administrative Code, applicable for the tax period at issue, provides that:

As a general rule, income derived from sales made by nonresident sellers to Indiana buyers is not subject to gross income tax unless the seller was engaged in business activity within the State and such activity was connected with or facilitated the sales. Local activity sufficient to subject the seller to taxation may result from his maintenance of a fixed business location in Indiana, or may result from the nature and extent of his business activities in the State.

...
(1) Nontaxable in-shipments

(b) Sales made by a nonresident who has a business situs or business activities within the State, but the situs or activities are not significantly associated with the sales, and the goods are shipped directly to the buyer upon receipt of a prior order. . . . For the sales to be considered as nontaxable under this rule, they must be initiated, negotiated and serviced by out-of-state personnel, and contact with the Indiana business situs or with employees operating within the State must be no more than incidental.

Ind. Admin. Code tit. 45, r. 1-1-120 (1978) (repealed 1999).

In the instant case, the activities of the taxpayer's technicians are minimal and incidental to the sales of goods from the taxpayer to the Indiana dealers. Sales orders are sent to, and processed by, out-of-state offices; the taxpayer has no office in Indiana; and the goods are shipped into Indiana from out-of-state warehouses. The only direct connection the taxpayer has with the state is the few technicians it employs. This is not sufficient to subject the taxpayer's sales in this state to Indiana gross income tax.

FINDING

The taxpayer's protest is sustained.

II. Tax Administration – Interest

DISCUSSION

The taxpayer protests the imposition of any penalty or interest on the amount of tax assessed. No penalty was assessed by the auditor. The taxpayer was sustained on Issue I, therefore the question of interest on that assessed amount is moot. Regarding any assessment amount not included in Issue I, interest applies and is due. Under Ind. Code § 6-8.1-10-1(a), if a person incurs a deficiency upon a determination by the Department,

the person is subject to interest on the nonpayment. The Department has no discretion regarding the imposition of interest.

FINDING

The taxpayer's protest is sustained as far as any interest imposed on the amount assessed in Issue I.